

2010

STATE OF MONTANA

Montana's Guide to Alcohol Compliance Checks



Recommended Practices for Alcohol Compliance Checks

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PREFACE

The consumption of alcohol by our youth has reached a critical mass level. Overall, alcohol affects our families and communities. Alcohol claims more lives than any other drug combined. It is the leading cause of traffic accidents, fatalities, crime, suicides, and sexually transmitted diseases and below average grades and athletic ability.

Communities across the United States have mobilized efforts to reduce the tragedies surrounding underage drinking and the consequences thereof; in the areas of treatment, enforcement and education. With that in mind, no single approach can solve the problem facing our communities. Each effort must be implemented and enforced consistently and fairly. Research reflects that effective and regular alcohol compliance checks (ACC) can decrease sales to minors, decrease traffic accidents, decrease health problems and help build awareness to the dangers of underage drinking.

Some approaches have focused on educating young people about the dangers of drinking and equipping them with the knowledge and skills to make responsible choices. Other approaches have tried to strengthen the relationships young people have with family, peers, teachers and others. Still others have focused on the array of adult institutions that manufacture, distribute, sell, provide, promote, and regulate alcohol.

This manual is designed for law enforcement officers and their partners for developing and implementing a consistent compliance check system for establishments across the state that sell or serve alcohol. Research indicates that while many alcohol establishments refuse sales to underage buyers there are still a number of establishments who continue to sell to those under the age of 21.

In 2006 the Sober Truth on Preventing Underage Drinking (STOP) Act was passed by a unanimous vote in the Senate and House. This was one of many indications that underage drinking is a priority at national, state, and community levels. Even the Surgeon General stated in his "Call to Action" that our children are our priority.

This guide provides an outline on how to conduct alcohol compliance checks consistently across the state, how to select youth to participate in the program and how to document violations.

WHY ENFORCE LIQUOR LAWS IN MONTANA?

THEY SAVE LIVES!!!

If you want to change the social norms in your community regarding the acceptance and use of alcohol by minors and adults, you will find that regular and consistent alcohol compliance checks will decrease the sale to youth and improve public awareness of the issue. Crimes by youth are usually committed while under the influence of alcohol and other illegal substances.

1. More and more teens are drinking at younger ages. Research shows age 11 for boys, and age 13 for girls. Youth that begin drinking prior to age 15 are 40% more likely to become alcoholics. When the United States rose the drinking age to 21, a decrease of alcohol related problems was observed and research showed the number of youth that started drinking in their later years drank less and less often.

Let's face it; the views of the public often influence what laws our law enforcement leaders put more emphasis on. The views of the Officer can also severely affect what and how laws are enforced. Statistically, most Officers believe that underage drinking is a problem in their community and that they do not have sufficient resources to deal with the issue. Most say their own supervisors do not believe underage drinking is a "high priority."

It is up to the department's Chief or Sheriff to ensure all laws are being enforced. Regular meetings with members of the community and media can help foster and influence change, help develop attitudes and beliefs that underage drinking is unhealthy, illegal and unacceptable. This also sends a clear message that incidents regarding alcohol including DWI/DUI are not tolerable.

Community leaders should assess the underage drinking problem in their communities and consider effective approaches— such as community organizing, coalition building, and the strategic use of the mass media—to reduce drinking among underage youth.

DOES MY AGENCY HAVE THE AUTHORITY TO CONDUCT ALCOHOL COMPLIANCE CHECKS?

Montana has a statute governing what agency has the authority to do so. Having a license to sell alcohol is considered a privilege and those businesses are subject to licensing laws and inspections.

1. **American Athletic Institute.org**

WHY ALCOHOL COMPLIANCE CHECKS?

If done correctly, this inexpensive and effective tool can help reduce alcohol related incidents involving youth. Checks have been conducted nationwide and research shows that over 50% of the youth in any community could purchase alcohol without being asked for identification. Alcohol Compliance Checks are just one of many strategies law enforcement and communities can use to reduce youth access.

The problems that occur with underage drinking have been documented tirelessly. Over \$60 billion dollars is the estimated cost of alcohol use by youth. Over half of the students that attend college are victims of campus related crimes where either the victim or suspect had been under the influence at the time of the incident.

It has also been documented that the correlation to athletic performance and grade point averages decrease when the user consistently consumes alcohol. Knowing this, enforcing underage drinking laws can prevent alcohol related tragedies, reduce teen pregnancy and STD's as well as keep kids safe. Among other crimes, social problems such as assaults, noise complaints and sexual assaults can also be reduced.

If organized properly alcohol compliance checks are easy to do and inexpensive. Most officers would rather participate in an ACC program than have to respond to a traffic incident involving youth and alcohol. They also send a good message to the public that underage drinking is no longer accepted in the community.

Alcohol compliance check programs in retail outlets, media campaigns and license revocation can increase deterrence by using the following techniques:

1. Undertake regular and comprehensive alcohol compliance check programs, including notification of retailers concerning the program and follow-up communication to them about the outcome (sale/no sale) for their establishment.
2. Enforcement agencies should issue citations for violations of underage sales laws, or any other liquor law violation, and report them to the Department of Revenue, Liquor Control Division for administrative action.
3. Communities and states should implement media campaigns in conjunction with alcohol compliance check programs detailing the program, its purpose, and outcomes.

EVIDENCE THAT COMPLIANCE CHECKS WORK

Montana Case Study

December 2004 - June 2005

First wave of alcohol purchase attempts; businesses in compliance 45%
Law enforcement made immediate contact with businesses with results of the checks
Results of every check was sent to Department of Revenue and media
(At the time there was no standardized training for businesses)

July 2005 – June 2006

The Flathead County Multi-jurisdictional Underage Drinking Task Force is supported by EUDL Funding from the Office of Juvenile Justice Delinquency Prevention and issued through the Montana Board of Crime Control. Local support comes from the STOP Underage Drinking in the Flathead Coalition and Flathead DUI Task force.

Agencies Involved:

**Flathead County Sheriff's Office
Kalispell Police Department
Montana Highway Patrol
Columbia Falls Police Department**

**Fish, Wildlife and Parks
U.S. Forest Service
Whitefish Police Department**

Businesses noticed of forthcoming checks via education packets sent to businesses
Responsible alcohol sales and service training offered to businesses every month
Notices sent to local governments and the community
Quarterly statistics reported at city/county meetings
Weekly media releases (newspaper, radio & television)
Lunch meetings with local fraternal organizations (Elks, Eagles, Lions Clubs, etc.)
Letters to the Editor of local papers sent quarterly regarding progress and tips for parents

The joint effort between six law enforcement agencies and local coalitions during the last twelve month increased compliance with the law over 70%, achieving a 30% reduction in illegal alcohol sales to youth. Checks were done once a month to over 200 businesses.

Clearly, alcohol compliance checks reduced the availability of alcohol to youth. The best available evidence suggests that at least one check, and ideally two checks, should be conducted annually.

Alcohol Compliance Check Program Overview

Programs should utilize youth who are **obviously** under the age of 21. A good standard to use is a teen that is between the ages of 18 and 20.

Once selected the youth, accompanied by an Officer, will attempt to select and purchase a known alcoholic brand of alcohol. If the youth is sold the alcohol, the seller (employee of establishment) is issued a citation. After which a copy of the report and citation should be filed with the Department of Revenue, Liquor Control Division for administrative action against the liquor license holder.

BENEFITS OF PRIOR NOTICE TO COMMUNITY MEMBERS AND CITY/COUNTY COUNCILS

Announcements in local media (TV, radio, newspapers, posters on community bulletin boards, school papers, etc.) and presentations by officers to community groups can provide public notice of upcoming alcohol compliance checks and help change social norms regarding underage drinking.

Notifying the community of upcoming alcohol compliance checks is beneficial and provides notice that the laws are being enforced. This will also help build support within the community as many citizens are concerned about alcohol use by its youth. News of the pending checks or recent checks will probably prompt business owners and possibly parents to call and complain that they are being singled out in their community. If your council can be informed a head of time and have education as to why these checks are important your agency can reduce a lot of unwanted and unwarranted complaints.

If business owners complain about upcoming alcohol compliance checks, council members can respond with:

- *“Did you receive the information on complying with liquor laws in the notice letter sent to you?”*
- *“Are you aware your business is working on the front lines to protect our community against drunk driving and identifying underage patrons in your establishment?”*

Credible sources can also help show that it is not just law enforcement that is affected by the issue. Sources can be local chemical dependence councilors, doctors, prevention groups as well as youth who are concerned about the issue.

Law enforcement officials will find that educating people involved with alcohol sales and giving prior notice of alcohol compliance checks can help to bring a majority of the businesses into voluntary compliance. Providing notice to businesses of upcoming compliance checks may create the perception among staff that enforcement will occur, which often serves as a deterrent to making an illegal sale. Judges and attorneys are more likely to file compliant

action especially if the business has been given warnings and education of the upcoming checks.

HOW TO INFORM BUSINESSES OF PENDING ALCOHOL COMPLIANCE CHECKS

Write a letter to all alcohol sales licensees who will be part of the operation indicating that alcohol compliance checks will be conducted in their area. (Attachment #1) Include in the letter recommendations for how the business can ensure compliance with the law. Recommend responsible alcohol sales and service training for all servers/sellers as well as a review of their own policies, use of ID scanners and posted signage. Businesses may contact the Department of Revenue, Liquor Control Division at (406) 444-4307 or www.AlcoholServerTraining.mt.gov for information on the state's responsible alcohol sales and service training.

If possible, keep a copy or record of all letters mailed to establishments. If time allows, have a uniformed officer present the store owner or manager the letter in person. This direct contact method cannot be replaced with any other powerful written message. This also gives the owner/manager the opportunity to ask questions about law related matters.

If officers do not have the time to hand deliver a letter, consider sending the notification letters by "certified return receipt." This is a good way to ensure the businesses received notification and the receipts are easier to maintain as they take up less room.

Issues to consider and frequently asked questions:

UNDERAGE CI'S - HOW DO I FIND YOUTH IN MY COMMUNITY?

This can be the most challenging part of an Alcohol Compliance Check program especially in small rural communities. Some communities offer youth programs such as MADD or SADD; you may also want to consider neighboring military bases for such recruitment. Military officials encourage their enlisted to participate in programs such as this. If you are a small community, try borrowing Confidential Informants (CI's) and officers from neighboring jurisdictions. Other venues could be:

- Law Enforcement Academy Youth Programs
- Students taking Criminal Justice Courses at a local college
- Ads in newspapers
- Youth typically known by Police Officers who want to become officers later
- Children or relatives of personnel that work in your department
- Use youth from a neighboring Community

See attachment #2 for a sample marketing piece to recruit youth.

Paid versus Non-Paid CI's

Paid CI's may be covered by municipal insurance in the event of accident or injury. Some prosecutors consider paid CI's to be more credible in court. Paid CI's are seen as professional and are less susceptible to being characterized as anti-alcohol crusaders.

Recruiting non-paid CI's may be difficult or time-consuming. Paid CI's are often more committed to being available for court or administrative hearings. However, non-paid CI's may be necessary due to lack of funds. Pay should not be related in any way to purchase attempt success or failure rates.

The typical rate of pay for CI's in large cities is approximately \$8 to \$9 per hour. You may want to consider a flat rate regardless of the hours or establishments checked. Be sure to match wages to prevailing wages in the local community. It is recommended not to work CI's more than 5 hours during each alcohol compliance check operation.

Is law enforcement allowed to use an underage person to buy alcohol?

Yes. It is an accepted practice in the state of Montana.

HOW OLD SHOULD CI'S BE?

They cannot appear older and they cannot misrepresent themselves with a false document or lie about their age. As previously stated, the best ages that are typically sought are between 18 and 20. Avoid using youth that are within 4-6 months of turning 21 to avoid confusion for the sales clerk and in case the CI turns 21 prior to giving his/her testimony. In some cases someone who is 17 may be used, but get their parents approval in the form of a waiver or a ride along form as well as your supervisor's approval first.

Depending on the "political climate" in your community you may want to try age verification with your CI by conducting a simple evaluation. Take your CI to a public area such as a mall or local event and ask people "How old do you think this person is?" By including a random analysis in the CI's employment file, you can show consistency in what the general public or "a reasonable person" believes their age to be.

For many judges and city councils, the only evidence needed of an illegal sale is proof of the CI's age and that a sale was made. However, some business owners, sellers/servers, judges, and councilpersons believe that apparent age warrants consideration. They may argue that any reasonable person would have considered an older-appearing CI to be age 21, regardless of actual age. You can also call the sellers and servers from the establishments who refused to sell to the CI as witnesses in administrative or criminal hearings.

CAN THE CI COERCSE THE SELLER?

No. Anytime the CI misrepresents his/her age, presents false identification or engages in “Come On” or “Please...” type language, the transaction will be tainted and the CI would then be in violation of Montana law 16-3-301(5) MCA. CI’s need to be truthful at all times. If the seller asks “Are you 21?” the CI must answer truthfully.

YOUR CI’S LIFESTYLE “IN GENERAL”.

All youth either male or female should have casual-type clothing that is age appropriate. Encourage female CI’s not to wear makeup or anything else that would make them appear older and male CI’s should have no facial hair.

Some prosecutors prefer alcohol compliance checks to involve CI’s who have NEVER purchased or possessed alcohol illegally, and who commit to not purchase or possess alcohol throughout the duration of the program. This would be a good rule of thumb to follow.

It’s inevitable that eventually the CI may have to testify in court or for the administrative hearing regarding the illegal sale. The CI should be briefed on this possibility prior to joining the program. Review the Confidential Informant Questionnaire (Attachment #3).

HOW MANY OFFICERS SHOULD PARTICIPATE IN THE CHECK?

Many departments conduct compliance checks with only one officer. Ideally, two officers, one in plainclothes as an observer and a second outside in uniform, should participate in the compliance check. Having an officer witness the sales transaction can eliminate virtually all challenges of entrapment, as they are considered “Professional witnesses of the State”. The presence of an observing officer also simplifies the identification of the seller and immediately focuses attention away from the CI and onto the officers. Some agencies use only plain clothes officers to conduct these checks. Whatever method used, credentials should be able to be easily displayed in case something unexpected happens. The overall concern should always be the safety of you and your CI.

CAN MORE THAN ONE CI BE USED?

Each law enforcement agency’s policy will determine this. Some agencies feel that the operation could be tainted and could allow the seller to say “they were distracted” during the transaction if more than one CI is used. On the flip-side, most youth are present with other youth so it is not unreasonable to have CI’s work together. Even if the compliance check operation involves making single purchase attempts at each site, it is helpful to have two CI’s work together. CI’s are usually more comfortable when working with another person their age. It is highly recommended that only one CI engage the seller in the transaction as to not confuse the seller. Whichever method you choose, be consistent in your operations.

CAUTION: When a single CI enters with an older plainclothes police officer, waitpersons/bartenders may perceive the pair as a family unit. This parent effect may prompt sales that otherwise would not occur, so try to avoid the parent effect by not having the plain clothed officer enter at the same time as the CI.

WHICH CODE SHOULD YOU CITE?

Montana Code Annotated 16-3-301 vs. Montana Code Annotated 45-5-623:

Sales to a Minor: 16-3-3-1 MCA (Civil)

As with any law enforced by peace officers, it is important that the most appropriate charge is entered on a citation. There are two statutes involving the serving /or providing alcohol to minors in Montana. One is a civil, the other is criminal.

Under 16-3-301(4)(a), It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to any person under 21 years of age. This statute is appropriate for citing those business employees that sell, provide or aide in the transaction of an alcoholic beverage in to a minor's possession.

If your CI does any of the following, your prosecutor and or Judge will most likely dismiss the case. This would also give the defense attorney a good argument.

- Falsely represents themselves with supporting documents that an ordinary and prudent person would accept that the CI was of legal age. **(Lies about their true age if asked and/or provides a false ID misrepresenting them. This could also include an attempt to coerce the seller)**
- The appearance of the CI was such that an ordinary and prudent person would believe the CI to be legal age to purchase the alcoholic product. **(Ensure the CI does not have facial hair or dress in a way to make themselves look older)**
- AND...
- The sale was made in good faith and in reasonable reliance upon the representation of appearance of the CI that the purchaser was of legal age to purchase an alcoholic beverage. **(The seller believed because of the combination of circumstances, the CI was over the age of 21)**

The 16 code is a civil penalty and will most likely not appear on the seller's criminal history. What makes this unique is that in almost all cases the seller did not "knowingly" provide alcohol to a person under the age of 21, but due to their own negligence they failed to properly identify the underage CI. Due to this fact, it can be more effective to cite title 16 vs. title 45.

Unlawful Transactions with a Child: 45-5-623 MCA (Criminal)

"Knowingly", is the criteria for 45-5-623 MCA, which is when a person commits the offense of unlawful transactions with children if the person knowingly sells or gives an alcoholic beverage to a person under 21 years of age. This statute is more appropriate where officers witness a third party transaction, such as "Shoulder Tap" or "Cops n' Shops" operations.

If your CI has been properly trained, they will know when to walk away from a business if they know someone inside, especially the seller.

Most likely during the course of your Alcohol Compliance Checks, someone will argue that they were "set up" and that what you are doing is "**ENTRAPMENT**". Remember that entrapment is, inciting or inducing someone to do a criminal act for the purpose of obtaining evidence for their own prosecution. Alcohol Compliance Checks merely afford the seller the opportunity to obey the law and ensure they are not selling age restricted products to those under 21. This is why it is important that your CI's not misrepresent themselves, use fake identification or lie about their age in the course of the operation.

Surveillance equipment can be purchased through "spy supply stores". Button cameras, pens, and cell phones are now made for such purposes. Funding options could include a grant, community donation, or local coalition or task force. This evidence is great if the case goes to trial and could reduce the burden of the CI testify if additionally witnessed by a peace officer.

CAN YOUR LOCAL COURTS HEAR TITLE 16 CASES?

Yes. Sometimes your local court may state they cannot hear the case when 16-3-301 is cited due to it being a civil matter. Montana Code Annotated 16-6-201 states the following:

Jurisdiction of Courts: (1) As to misdemeanor actions, the district courts of this state have concurrent jurisdiction with justice of the peace courts in all prosecutions under the Montana Alcoholic Beverage Code described in 16-1-101.

(2) The jurisdiction provided for in subsection (1) is in addition to the jurisdiction of:

- (a) justices' courts, as provided in 3-10-303;
- (b) municipal courts, as provided in 3-6-103; and
- (c) city courts, as provided in 3-11-102.

IS IT LEGAL TO VIDEO OR AUDIO RECORD THE OPERATION?

This is a question best left up to your prosecutor to decide since a recent Supreme Court ruling has left no definitive answer. Twelve states require, in most circumstances, the consent of "all" parties to a conversation and Montana is one of them (two-party consent state). Clearly we agree that people have an expectation of privacy in their homes and vehicles, but what about grocery stores, bars and convenience stores since these are public places in semi public space?

If your prosecutor believes there is an expectation of privacy in these businesses, your officers may need to get a warrant for the conversation between your CI and the seller. As previously discussed, some establishments may present logistical problems and it may be best if the CI was unaccompanied. Depending on your prosecutor in this case, if your CI is wearing a recordable device - they may be required to testify. The CI may be required to testify anyway, regardless if an undercover officer witnesses the transaction. Officers that are in uniform are not required to obtain permission or a warrant to record a conversation.

WHAT IF THE SELLER WANTS TO SEE THE CI AFTER THE SALE?

If possible always avoid direct contact as tempers and emotions will typically be high. By using a color scanner, print a copy of the CI's license and black out the name and address. If a seller asks to see the CI's you can use the color copy instead of a face to face encounter. This is a good time for a little training session. Ask the seller to look at the color copy and see if they can determine why they shouldn't have made the sale. This process should be a part of your operation.

The copy of the ID provides proof of actual age and allows the officer to educate the seller on where to look when deciding if the CI is of legal age. It can also be helpful in court.

CAN THE CI PURCHASE OTHER ITEMS IN ADDITION TO THE ALCOHOLIC BEVERAGE?

Although it is common for patrons to purchase additional items during a transaction (i.e. Gum, potato chips, etc), it is not recommended during alcohol compliance checks. Some sellers would again say the transaction confused and distracted the clerk. Any attempt to distract the seller could be deemed to taint the operation, thus to promote fairness extra items should not be purchased. Although it is not the intent to mislead the seller, it should be avoided.

WHAT ABOUT THE TYPES OF ALCOHOLIC BEVERAGES TO PURCHASE?

Type and Quantity of Alcohol to Purchase (Cans vs. Bottle vs. Mixed Drink)

Consider youthful drinking practices to determine the type and quantity of alcohol to purchase in your compliance check operation. Beer is generally recognized as the drink of choice among young people. Typical young drinkers select common and less expensive brands of beer. When

young people consume mixed drinks, sweet drinks are a common choice. The need to preserve illegally sold alcohol as evidence will influence the type of alcohol to purchase. Bottled beer (with retrievable caps) is the easiest type of purchase to preserve. If you choose to purchase mixed drinks or glasses of beer, you may need additional supplies to successfully preserve the evidence.

Mixed drinks create an issue for evidentiary purposes. It is difficult to store and without tasting it, how can one testify to the type of alcoholic beverage. The alcohol will eventually evaporate making it easier to dispute in court.

The type of alcohol to be purchased should be arranged prior to the operation. Try to avoid twelve packs of alcohol. They are expensive and could be problematic in the realm of evidence collection. Go with the single can, six packs, or cheap liquor if possible. Try to stay away from off brands and “trendy” alcohol, as the seller may be unaware the brand is alcoholic. Commonly and commercialized alcoholic beverages should be purchased. Known brand names tend not to confuse the seller with non- alcoholic brands. Depending on your policy and prosecutors, you may need to keep it as evidence until trial.

FREQUENCY OF ALCOHOL COMPLIANCE CHECKS

The ideal compliance check campaign systematically checks all licensees in the jurisdiction. Successful operations have been conducted in a wave format in which all licensees are checked over a short period of time. Some communities have experienced long-term success in changing compliance rates by conducting waves of compliance checks twice annually, on an irregular schedule.

Other successful operations run on a routine periodic basis, in which a few businesses are checked every few weeks. This approach avoids periods when businesses can be reasonably certain no checks will be conducted. To successfully counter claims that you are unfairly targeting a particular business, establish a protocol defining which businesses will be checked during any particular operation. Ideally, every type of licensee that serves or sells alcohol should be checked, this would include restaurants, caterers, breweries, wineries, and local distilleries. Your agency will need to decide which method works best for your organization. Whichever you choose, again, be consistent in your operations.

Law enforcement personnel and state certified trainers for the states responsible alcohol sales and service training program may obtain a list of liquor license holders in their jurisdiction by contacting the Department of Revenue at 406-444-4307. Some businesses might be approved to sell, but do not have it in stock yet. Have a policy in place on how to re-check a business if they have sold to a CI in the past.

Also, document additional complaints that a business is selling to minors as you may want to re-check the business if you feel the complaint is valid and not anonymous. Businesses will frequently attempt to have competitors checked to be malicious.

OPS PLAN (OPERATIONAL PLANNING)

PRE-OPERATION ACTIVITIES

Type of Compliance Check

Determine what type of compliance check operation fits your jurisdiction: administrative, criminal, or educational. Court decisions in your jurisdiction may limit how compliance checks may be conducted. Refer to the example checklist (attachment #4) in the back of the guide to help plan a successful compliance check operation.

Once you have made initial decisions and have identified sites (or regions) to be checked review the compliance check operation plan with prosecutors and licensing officials. Assemble packets for each date of the compliance check operation. Enlist the help of local coalitions or officers to take the pressure off the coordinator.

Establish your business list with specified region to check. Attach maps that show the location of each establishment and the order in which the purchase attempts should occur. Document the time of each purchase as well.

Prepare a work schedule for CI's and officers who will perform the compliance checks. Keep documentation on each check. A spreadsheet is perfect for maintaining all the information you want to keep. Be sure to print a hard copy periodically in case you cannot retrieve it from a computer and it makes it easier if your department head needs to review it.

Obtain and Document Cash

Obtain cash to be used in the purchase attempts. Keep accounting records of money spent at each establishment. Some department's document and track serial numbers of bills for evidence so they can get the money back prior to leaving the establishments. This may be an option when doing a high number of checks. Your court may be able to set up a fund from fines that could be used for "buy" money.

Obtain and Prepare Evidence Containers

Check with your evidence technicians and or prosecutors for handling containers that will be used for prosecution. In most cases involving open containers (server provided an open beverage), it will be difficult to store and it may lose evidentiary value since the alcohol will

eventually evaporate. It could also cause cross-contamination with other trial-type items. A sample could be refrigerated; however it will still deteriorate if stored for a long period of time.

Photographing the alcohol purchased during each attempt has been appropriate for misdemeanor cases. Refer to attachment #5 in the back of the guide for a sample format. If you do not have room in your evidence locker photograph and destroy the item, but always check with your prosecutor first.

Ordinance Review/Revision

Statutes are the primary source of law for age-of-sale enforcement. Local ordinances; however, may provide greater flexibility to law enforcement agencies. Some things to consider:

1. Review the current statute that is going to be enforced
2. Attach a copy of said statute to the packet and highlight the code violation
3. Attach a copy of a citation and verbiage to be used (i.e. *"Being an employee of _____, sold a can of _____, a known alcoholic beverage to a minor"*)
4. Review the possible fines and penalties for the violation and subsequent violation
5. Determine in advance the type of alcohol to be purchase

Businesses that face license suspension or revocation, and the potential of losing thousands of dollars in business, may make an aggressive defense against charges stemming from an illegal alcohol sale. A well-conducted compliance check leaves the defendant seller and business with only one possible defense: charging the officer or the CI with entrapment. To counter this defense, officers should ensure that their reports are thorough and accurate. An aggressive defense attorney and inquisitive reporters can combine to subject the case to public review and legal scrutiny more typical of a major felony case. To avoid this, ensure your CI is honest, trustworthy and has abided by the requirements of looking age appropriate, and that he/she has not provided the seller with identity information to make them believe the CI is older.

AVOIDING THE PHONE TREE AFFECT – DELAY “BUY-BUST” CONTACT

Many businesses that are checked during a compliance operation will call neighboring businesses to warn them a compliance check is occurring and to provide a description of the CI who is working with law enforcement. This behavior is often called telegraphing or the phone tree effect. Some departments use several CI's, alternating from business to business to minimize the effect of such warnings.

Agencies have reported that telegraphing has become such a significant problem that they have altered their compliance check procedures to avoid immediate post contact with the seller/business, known as the delayed “buy-bust.” These agencies conduct a purchase attempt at several establishments without any law enforcement contact with the sellers or the

businesses. After all business selected for that wave of inspections have been checked officers return to complete enforcement or education activities.

Anecdotal evidence suggests that most licensees who have been warned that compliance checks are being done in the area are atypically careful for a short period following the warning. Communities with a large number of licensees typically schedule waves (buy nights) several weeks apart. Their objective is a fair test of the businesses typical level of compliance, not to test the level of compliance stemming from a warning that a check is imminent.

A delayed post “buy-bust” contact procedure can complicate evidence preservation at on-sale establishments. Typically, the CI’s have to preserve and remove the evidence. Usually the CI (ideally a buy team of two) will pour a sample from the bottle or glass into an evidence bottle and carry it to the squad car in his or her pocket. The food must be paid for. With immediate post-buy procedures, the officer typically interrupts the food order. It is canceled or ignored and establishments seldom expect payment. With delayed post-buy contact the buy teams either wait for delivery of ordered food and eat, or must leave early placing an adequate amount of cash at the table to cover the bill.

Some agencies return to the site on the same evening; others return on a subsequent night. Store clerks, bartenders, and waitpersons tend to have varying schedules and some difficulty has been experienced in making contact with the seller to issue a summons, requiring several visits to the site. It will be more difficult to obtain the buy money as evidence, as by the time the officer returns several hours after the sale it may have been given out as change or will be co-mingled with other receipts.

When delayed, the post “buy-bust” contact requires more extensive reports to be made to insure accurate identification of the seller upon the return visit for summons or congratulations. An observing officer is essential to facilitate identification of the seller. Agencies should be aware that the “phone tree” could negate the validity of checks conducted at businesses warned that a check is imminent. The more complex the delayed “post buy-bust” contact procedure is, it may be necessary to effectively determine if a business routinely verifies age before making sales of alcohol.

Agencies that encounter a business community that consistently use the “phone tree” and where CI’s are easily accessible may benefit from checking only one business in the community every few weeks. The “phone tree” between businesses will have the effect of enhancing overall compliance, and an accurate measure of compliance may be obtainable.

If your agency chooses the delayed “buy bust” method just be sure to take the above listed concerns into consideration.

CONDUCTING ALCOHOL COMPLIANCE CHECKS – Post Operation Activity

Submit Reports

The coordinator of the program or lead officer of the operations should ensure that citations and reports are forwarded to the Department of Revenue, Liquor Control Division for administrative action. If your agency or prosecutor does not want to provide copies of the citation or police reports, a list containing date of operation, establishments that passed, establishments that failed, seller's name is all that is needed for the Department of Revenue to take administrative action. This can be accomplished via an e-mail or a letter on department letterhead. The Department of Revenue prefers copies of the citation and report.

Communication with Businesses

A letter of success or failure to businesses helps keep the owner/manager of employee's informed of the outcome of the alcohol compliance checks. (Attachments #6 & 7) This also helps if the employee fails to notify their employer of the compliance check.

- Licensees get positive feedback about the efforts they took to ensure staff was compliant with the laws.
- Licensees will be prompted to re-think the importance of compliance. The letter could include data on the overall outcome of the alcohol compliance check operation and information about the consequences for those who failed the compliance check. The letter should recommend obtaining responsible alcohol sales and service training for their employees.
- Licensees will be prompted to communicate with their staff the importance of compliance when selling and serving.
- Continuing business education after the enforcement operation will be powerful evidence to counter claims that law enforcement is "out to get businesses."
- A second letter of recognition directed to the individual seller, but mailed to the owner or manager, will prompt management to positively reinforce the seller's good behavior.
- Some organizations could provide letters or certificates suitable for the establishment to frame.

Communication with the Community

News releases (attachment #8) on the compliance check operation, which includes data on the negative consequences of alcohol access by minors, can further influence community attitudes toward underage access to alcohol. Most departments issue a press release soon after the first wave of compliance checks is complete, citing successes and failures and the number of reports sent to the prosecutor for charges.

Other departments elect to use criminal conviction or administrative hearing results as the lead for the news release, avoiding pre-trial/hearing publicity. Ideally, news releases should be issued both after the first wave of compliance checks and after conviction(s). News releases contribute significantly to the effect of your operation in the following ways:

- They send powerful messages to the community that the chief executive of their law enforcement agency considers providing alcohol to underage persons a serious issue.
- They provide an opportunity to educate the entire community on the negative consequences of alcohol use by youth (e.g., crime, teen pregnancy, educational problems, auto crashes, etc.).
- They let community residents know that their law enforcement agency is proactive in trying to help keep their kids safe.
- They send messages to businesses and individuals working as alcohol servers or sellers regarding their responsibilities, and that law enforcement is paying attention to their level of compliance with alcohol sales laws.

Media may learn of the compliance check operation and demand the identity of businesses and sales information even if a press release is not issued. Departments that are planning to use press releases or that anticipate demands for information from the press on the identity of businesses that fail the compliance checks may wish to explain in the pre-check notices to businesses that public identification of sellers may occur.

Engage community groups that have an interest in alcohol and youth issues. Contact the local MADD/SADD chapters, neighborhood councils, groups serving teens, block clubs, prevention committees or others who will support efforts to restrict teen access to alcohol. These groups can provide important political support.

If merchants exert political pressure in an effort to prevent compliance checks these groups will often want to serve as a counter-balance. Groups organized around public health and safety will want to reassure elected officials that important electoral constituencies want compliance checks. These groups also serve as an excellent source of volunteer help and often can assist law enforcement agencies in obtaining funding.

EDUCATE AND INFORM PROSECUTORS AND JUDGES

Educating the public officials who will hear cases is extremely important. Alcohol plays an important role in American culture. Many people, including participants in the criminal justice system, may remember participating in underage drinking. Credible research has been done suggesting that one drink per day may even improve health for some, particularly middle-aged and older males at risk for cardiovascular disease. Unfortunately, this potential benefit is far outweighed by the large number of people for whom alcohol may be life-threatening.

The prosecutors of alcohol offenses and the presenters at administrative sanction hearings need to recognize and respect the social acceptability of alcohol. Judges, juries, and elected officials who hear administrative cases, and even some law enforcement officers, often have conflicting views on the seriousness of underage alcohol consumption. Acknowledging the legitimacy of the responsible use of alcohol in moderation by many adults may help alleviate some of these conflicting outlooks. Assess the track record or attitudes of the local court or council and consider including an educational effort in early prosecutions/administrative hearings. A well-crafted and brief presentation by a local expert on the consequences of youth access to alcohol can exert a powerful influence on these decision-makers. You don't want to appear as if you are presenting a case that you are anti-alcohol but one that says you are against illegal underage consumption. But, at the same time support the responsible consumption by of age persons.

OTHER CONSIDERATIONS

Some departments have experienced exceptionally high sales rates that undermine the strength of a criminal case. Two identified factors that contribute to unusually high sales rates are a CI whose apparent age is consistently judged by sellers to be over 21, and a community-wide norm of the acceptance of alcohol use by youth . These problems are more likely to arise where no pre-buy age assessment was conducted and where little or no pre-operation community education occurred.

Another thing you might want to consider in your community is the passage of supporting city ordinances that may help your efforts. Social Host ordinances can be one tool that may assist you in your efforts to combat underage drinking. This concept is slowly spreading across the state. Many cities have already passed similar ordinances. (Attachments #9, 10, 11 and 12)

CONCLUSION

Fewer crimes will occur when youth drink less. Overwhelming evidence indicates that alcohol does not belong in the hands of our youth; underage drinking harms our communities, our families, and our children. Compliance checks are a powerful and positive tool for law

enforcement to use in restricting youth access to alcohol, because they hold **ADULT SUPPLIERS**, as well as the **YOUNG CONSUMERS**, accountable for the problem.

Compliance checks are also effective community policing tools. Law enforcement agencies can significantly reduce the illegal sales of alcohol to underage persons by conducting cost-effective compliance check operations. Pre-planning and interaction with the community enhance community support and improve outcomes at trials and administrative hearings. Careful selection of underage CI helps avoid conflict over their apparent age.

Publicity and officer interactions with servers, clerks, and business people can influence community norms on tolerance of youth drinking alcohol. Compliance checks are an important weapon in law enforcement's arsenal and may be an effective method for reducing alcohol-related crime and public health problems.

**Business Notification Letter
(Attachment #1)**

Date

Business Name

Address

City, State, Zip

Dear Business Owner:

The (enter agency name) will be conducting alcohol compliance checks to enforce liquor sales laws in (City). We believe that helping you to avoid law violations, such as selling alcohol to underage people, will help us to avoid the problems that come with underage drinking. It is less expensive and easier to prevent youth access to alcohol than to investigate the motor vehicle crashes, fights, and other crime that underage drinking promotes. Nearly half of injury motor vehicle crashes involve drivers who had been drinking alcohol. Communities that have reduced the availability of alcohol to underage drinkers have experienced fewer crashes and fewer crimes.

(Replace followingntence with your own local statistics)

Over (300) purchase attempts were conducted in _____ County since 2005. Youthful-appearing CI's were sold alcohol without being checked for ID approximately 50% of the time. This evidence suggests that a serious problem exists.

Underage young adults will come into your business during the next few months to try and buy alcoholic beverages. Police officers/sheriff deputies will be working with these youths. Staff caught selling alcohol to CI's will be issued a citation and referred for prosecution.

Businesses where sales to CI's occur will be referred to the Department of Revenue, Liquor Control Division for administrative action. Under state law reports on alcohol compliance check operations become public data and therefore the identity of businesses checked and the outcome of each check can be obtained and published by the news media. We want your staff to refuse alcohol sales to our CI's.

Sincerely,

Sheriff,
Chief of Police
City/County Attorney

Marketing Piece
(Attachment #2)

Are you age 18 or 20 and look your age?
Are you considering a career in law enforcement?

The _____ Law Enforcement Agency needs volunteers to participate in a liquor law enforcement compliance check operation as underage buyers.

Alcohol products in the hands of underage youth pose a serious threat to the public safety and public health of our community. The (enter agency name) is committed to upholding Montana law and local ordinances that appropriately prohibit youth access to these products. We want your help in this important law enforcement effort. If you are considering a career in law enforcement, want to play a role in promoting public safety and public health in your community, or just want to help law enforcement with crime prevention, consider becoming a “buyer” for our compliance check operation.

WHAT YOU WILL DO:

You will enter businesses licensed to sell alcohol — convenience stores, bars, restaurants, etc. — to try to purchase alcohol. Law enforcement officers will work with you. If an illegal sale occurs, the individual who sells to you and/or the business that person represents may be brought into criminal court or an administrative hearing. You may be needed to testify at any trials or hearings to explain what you did and said during the compliance check. Participating in compliance check operations will give you a unique opportunity to experience law enforcement work. We check approximately (**NUMBER #**) of businesses in our jurisdiction to insure that they are complying with the law. Buyers will need to be available to make court or hearing appearances for up to six months after the last compliance check.

IF YOU ARE INTERESTED:

Call (enter name) at (enter *phone#*) to set up an interview time. Those who are not selected are usually screened out because they look too old or too young. Selected applicants will then be trained. Scheduling for the actual compliance checks will be done during the training process.

CONFIDENTIAL INFORMANT QUESTIONNAIRE

(Attachment #3)

I, _____, the undersigned, understand that while I am assisting the Special Investigations/Alcohol Enforcement Team with a special operation, I will be bound to the conditions included below. I further signify, by initialing each condition, that it has been fully explained to me and that I understand each condition in its entirety.

_____ I understand that cooperating with the AET does not give me the authority to violate any local, state or federal laws.

_____ I understand that, should I violate any local, state or federal law, I will receive no special treatment or consideration by virtue of assisting the AET.

_____ I understand that I am NOT a Law Enforcement Officer, and will not attempt to represent myself as one.

_____ I understand that I am not to effect any physical arrests for any violations of the law as part of my services to this agency.

_____ I understand that I am specifically NOT AUTHORIZED to carry or use any firearm, other weapon, or item of contraband.

_____ I understand that I am not to carry any documents or equipment that could represent Law Enforcement field.

_____ I will not disclose to ANYONE that I am providing a service to this agency, except in answer to a subpoena in a Court of Law.

_____ I understand that I may never become involved in any activity that would constitute entrapment, which is "the inducement or encouragement" of an individual to engage in illegal activity in which he/she would otherwise not be disposed to engage.

_____ I understand that I may never use my sex, sexuality or sexual activity to induce or persuade an individual to sell or deliver a controlled substance, dangerous drug or any other substance purported to be the same.

_____ I understand that I am not to use my services with this agency to resolve personal matters.

_____ I understand that I am not to participate in any investigations of any criminal activity unless the investigation is being DIRECTLY SUPERVISED by an AET member. I agree to follow the instructions of the supervising AET member while assisting in such investigations.

_____ I am fully aware that I may have to testify in future court proceedings concerning investigations in which I might participate.

_____ I am agreeing to cooperate with the AET of my own free will and accord, and not as a result of any intimidation or threat.

_____ In agreeing to cooperate with the AET, I understand that NO Law Enforcement Officer may make any explicit or implicit promises or predictions regarding the likely disposition of any criminal proceedings that may be pending against me.

I CERTIFY THAT ALL OF THE ABOVE CONDITIONS HAVE BEEN EXPLAINED TO ME AND THAT I FULLY UNDERSTAND AND WILL ADHERE TO THEM.

Confidential Informant

Date Time

Witnessed by: _____

Date: _____ Time: _____ Location: _____

ALCOHOL COMPLIANCE CHECK CHECKLIST (Attachment #4)

Follow the suggested steps below to implement the compliance check purchase attempt:

1. **Photograph** the CI. Do this every time you conduct checks and keep a personnel folder on each CI. Write the date, time and case report number on their photo. Your CI may be called to court and will need to show documentation of what they looked like the day of the check. (Attachment #13) Be sure to fill out a CI Information Form (attachment #14) to keep in the file. Your CI should also sign a Device Authorization Form (attachment #15) and a Release of Liability Form (attachment #16)
2. **Search** the CI to document that he/she is not carrying extra cash and/or fake/altered identification. If they have other personal items, provide them with a locker or have them place those items in their vehicle. There is some question as to whether a CI should use their own ID during the operation. This guide recommends that the CI use their ID. This will prevent the seller from claiming any entrapment or confusion issues. Additionally, one of the objects of conducting alcohol compliance checks is to educate servers/sellers on checking ID's. This can help to facilitate this point.
3. Briefly **review** places to be checked and CI's responses to possible questions by a seller. This will also ensure they won't go to places where they know people as it could taint the sale. Give the CI the option of walking away if he/she recognizes someone. You can always do the check later with a different CI.
4. Distribute buy money to the CI and document bills for each check.
5. **Plainclothes officer enters** establishment; exits if conditions are inappropriate for check. (Use of a plainclothes officer inside the establishment is optional but **strongly** recommended; small agencies may need to swap officers with neighboring agencies to avoid recognition of the officer by the sellers).
6. **CI enters** after the plain clothed officer and **selects** the predetermined type of alcohol product (off-sale premises) or places order for a bottle of beer (on-sale premises).
7. CI and plainclothes officer **witness** seller/server's refusal or sale. CI does not consume any alcohol!
8. If using two CI's, **second CI enters** and makes a second purchase attempt, from a different employee if possible (confrontation of the sellers should occur after the last buy attempt in the establishment). Once buy is complete, CI should exit the business before officer approaches seller.

9. IMMEDIATE (Buy – Bust) CONTACT PROCEDURE: Plainclothes **officer approaches server/seller**, explains check, and signals for uniformed or other officer by radio/phone to enter the site.

DELAYED (Buy – Bust) POST-BUY CONTACT PROCEDURE: Officer exits site and fully documents sale with sufficient detail to ensure identification of the individual seller when contact is made at a later time.

AT THE TIME OF CONTACT:

10. **Officer:** Introductions are made and Officer identifies self and assignment and Seller/server identified.

- A. Success (no-sale). Issues congratulations (immediately **provides positive feedback**) and identifies seller as a possible witness of apparent age.
- B. Failure (sale). Issues warning, summons/citation or notice of intent to refer the case for charges.

11. **Viewing** of CI's photograph ID upon owner/manager request. This is always a good idea to establish good rapport with owner/manager. If possible provide a computer scanned copy and black out CI's name and address. A photocopy would also suffice.

12. **Officer** processes and collects evidence and above all monitors CI's to insure their safety.

13. **Officer and CI** debrief in vehicle to ensure what was said and observed, which will be documented in officer's report. If using a recorder, CI should describe the purchase and officer note date, time and case report as well as location.

14. **Process repeated** at next assigned target business.

15. At the end of the shift **complete all reports** and **log in evidence** (attachment #17)

16. **Forward Report** to appropriate authority in your jurisdiction for criminal charges. A copy of the citation and police report should be forwarded to the Department of Revenue, Liquor Control Division at P.O. Box 1712, Helena, MT 59624, as soon as possible for administrative action.

YOU'RE AGENCY HERE

Evidence Documentation

(Attachment #5)

CASE NUMBER # _____



Beer purchased by _____ (i.e. C.I. #07-0099) on January 29, 2009 at 22:05 hrs.

Business Name: Gas and Go, 112 Main Street, (city and state)

Seller: Name: Tom Smith
DOB: 07/18/1964
DL#: 0400519614106

PASS LETTER
(Attachment #6)



To: (enter business name and address)

Date: January 30, 2009

Re: Alcohol Compliance Check

On Friday, January 30, 2009 the Alcohol Enforcement Team conducted a compliance check of your establishment to determine if your staff would sell alcohol to a minor. Our "underage buyer" was not successful in purchasing an alcoholic beverage. The server, (name), correctly identified the underage buyer and refused the sale of alcohol and should be commended for their actions.

As you know, you as the license holder carry the primary legal responsibility for ensuring that staff complies with alcohol laws. Thank you for training your employee's and maintaining a zero-tolerance towards underage drinking.

If you need to obtain Responsible Alcohol Sales and Service (RASS) training for any of your employees who have not yet been trained, you may contact Department of Revenue, Liquor Control Division at (406) 444-4307 for information regarding the state RASS class, Let's Control It, or for information on other pre-approved RASS courses.

Respectfully,

Officer Name
Officer Title
Agency Address
Agency Phone Number

P.S. Great Job! Please feel free to contact me if you have any questions.

FAILURE LETTER
(Attachment #7)



To: (enter business name and address)

Date: January 30, 2009

Re: Alcohol Compliance Check

On Friday, January 30, 2009 the Alcohol Enforcement Team conducted a compliance check of your establishment to determine if your staff would sell alcohol to a minor.

When the team entered your establishment, the underage buyer was successful in purchasing alcohol from employee (NAME) and a transaction was completed.

(EMPLOYEE NAME) was cited under 16-3-301 MCA , Unlawful sales to a minor. You as the license holder carry the primary legal responsibility for ensuring that staff complies with alcohol laws. Per our agreement with the State of Montana I am required to forward a report to the Department of Revenue, Liquor Control Division for administrative action.

We recommend that you obtain Responsible Alcohol Sales and Service (RASS) training for all your employees who sell alcohol. For information regarding the state's RASS class, Let's Control It, or a pre-approved RASS course, contact the Department of Revenue, Liquor Control Division at (406) 444-4307

Respectfully,

Officer Name, Officer Title

Agency Address

Agency Phone Number

**MEDIA RELEASE
(Attachment #8)**

On Friday, October 17th, members of the Alcohol Enforcement Team conducted Alcohol Compliance Checks to determine if local establishments would serve alcohol to minors. Out of the seven businesses checked only two passed, by determining the minor was under the age of 21.

When asked, the Minor was to produce their own valid Montana License which shows the minor to be under the age of 21. There was no attempt to deceive the servers.

Below is a list of establishments that passed:

- Hungry Horse Liquor Store
- Reds, Wines and Blues
- 7-11

Below is a list of establishments that failed:

- Caper's Restaurant,
- Eagles Club
- Mercantile

Establishments that serve alcohol are encouraged to attend Responsible Alcohol Sales and Service (RASS) Training. These classes are geared for checking ID's, education on Montana liquor laws and liability. You may contact the Department of Revenue, Liquor Control Division at (406) 444-4307 for the state's RASS class schedule or for a list of pre-approved RASS courses.

Over the weekend 5 youths were arrested in connection with possessing alcoholic beverages. Flathead County Deputies also responded to a Saloon for a disturbance. On scene they determined one of the patrons was only 20 years old and was intoxicated. The patron received a citation for Minor in Possession of Alcohol; the bartender was cited for serving a minor. (enter your own agency information in this paragraph)

The Alcohol Enforcement Team is encouraging all establishments to educate themselves on asking and reading an ID. The number of incidents involving alcohol can be reduced by all of us doing our part.

"It doesn't pay, to serve minors".

Deputy/Officer _____

Sample Ordinance
(Attachment #9)

**Community Social Host Legislation
(Underage Drinking Party Ordinance)
Social Host ORDINANCE OF _____ County**

BE IT ENACTED, by:

(_____ County, Cities therein and unincorporated towns) of _____ Montana, as follows:

Ordinances NO. _____, shall be hereby added to Section ____ To read as follows:

“Social Host Ordinance # _____. Prohibition against consumption of alcoholic beverages by minors on private property.

Legislative Intent.

It is the purpose of this section to protect the public interest, welfare, health & safety within (enter city/county name) by prohibiting the consumption of alcoholic beverages and drugs by persons under the age of twenty-one (21) at a private premises.

The _____ County, Cities within and unincorporated towns finds that the occurrence of social gatherings at private premises where alcoholic beverages or drugs are served to or consumed by persons under the age of twenty-one (21) is harmful to such persons and a threat to public welfare, health & safety.

The _____ County, Cities within and unincorporated towns finds further that persons under the age of twenty-one (21) often obtain alcoholic beverages or drugs at such gatherings and that persons who are in control of such premises know or have reason to know of such service and/or consumption and will be more likely to ensure that alcoholic beverages and drugs are neither served to nor consumed by persons under the age of twenty-one (21) at these gatherings.

Bozeman City Ordinance (Attachment #10)

9.70.040 Exceptions to Section 9.70.020

A. The Director of Public Safety may grant a waiver to the provisions of ~ 9.70.020 for the purpose of holding picnics, parties, reunions, barbecues, or other public assemblies in public parks, provided the number of adults does not exceed seventy- five. Larger groups shall seek a waiver from the City Manager under Section B below.

1. Applications which are for events only in a public park, and do not involve more than seventy-five adults may be submitted without the public assembly permit application. All public park reservations are separate from the waiver process and a reservation for a park area does not guarantee the issuance of a waiver under this section.

2. An application shall designate either the applicant, or one or more members of the group submitting the application, as the contact person for the event. The contact person shall be present at all times during the event or shall arrange for an alternate contact person. The contact person shall be in charge of the event and be responsible for those attending the event.

B. The City Manager may grant a waiver to the provisions of ~ 9.70.020 for activities occurring in or on a public place other than a park.

1. All applications for a waiver under this subsection shall be made in conjunction with an application for a public assembly permit in conformance with the procedures in ~ 12.32.040 through 12.32.080 or its successor provisions, which are incorporated herein by reference, subject to any specific changes as contained in this section. The form for such application shall be provided by the City and shall be signed by the applicant.

2. An application must be filed in a timely manner prior to the event. Timely, in this instance, is a minimum of fourteen days under this subsection. The application may not be filed more than one hundred eighty days before the event. The minimum period may be waived after due consideration of the factors specified under Subsection G of this section.

3. Applications submitted under this subsection shall have proof of insurance in an amount acceptable to the City; and which includes the City as an additional insured.

4. For applications under this subsection, a safety plan for the event shall be submitted with the application, to be reviewed by the Director of Public Safety or a designee(s). The safety plan shall address admission of those who are under the legal age to drink, consequences when those under the legal age are caught drinking, the policy for service of those who are intoxicated or under the influence of alcohol, prohibiting those who are intoxicated or who appear to be impaired or under the influence from IX-33 10/2005 operating a motor vehicle by providing safe transportation alternatives, actions to be taken in the event of a disturbance or medical or other emergency, and other measures designed to maintain a safe environment for those in attendance.

5. For applications submitted under this subsection, there shall appear in the application arrangements for providing responsible beverage service for any group of 50 or more adults. Responsible beverage service requires that all beverage servers receive specific training through a recognized program approved by the City prior to the event. A beverage server under this section does not consume any alcoholic beverage during the event.

6. The application shall designate either the applicant, or one or more members of the group submitting the application, as the contact person for the event. The contact person(s) shall be present at all times during the event and shall not consume any alcoholic beverages during the event, and shall be in charge of and responsible for all beverage servers and patrons.

C. In seeking a waiver to ~ 9.70.020 the group leader or authorized representative shall file with the Director of Public Safety or City Manager, as applicable, an application for a city alcoholic beverage waiver.

1. All applications for a waiver shall be submitted to the City Manager's office after payment of the appropriate fee to the Finance Department. This fee shall be set by resolution of the City Commission. This fee is a non-refundable fee to cover administrative costs of processing the waiver. Payment of the fee does not entitle the applicant to a waiver.

2. If the application is for the use of any city equipment or if any city services shall be required, the applicant shall pay, prior to the issuance of a waiver, the charges for those services in accordance with a schedule of service costs approved by the City Commission by resolution.

3. If the event is to be held on a regular or recurring basis at the same location, an application for a waiver for the calendar year or any portion thereof may be filed at least sixty days and not more than one hundred eighty days before the date and time of the first event proposed. The City Manager or Director of Public Safety, as appropriate, may waive the minimum period after due considerations of the factors under Subsection G of this section.

4. An application not acted upon within ten calendar days of submission, or by the day of the event, shall be deemed denied.

D. Prior to the issuance of the waiver an investigation shall be made into the suitability and compatibility of the proposed function with other activities and the surrounding area. In making the investigation the Director of Public Safety or the City Manager shall consider the below listed criteria in addition to those considerations under ~ 12.32.040 through 12.32.080. The Director of Public Safety or the City Manager may issue a waiver subject to consideration of the relevant criteria and imposition of any conditions deemed necessary and reasonable, and may, in his discretion, deny the waiver based upon the consideration of the relevant criteria, the application, and any other information as may be otherwise obtained.

1. The type of activity, the hours involved, and the impact it may have on the safe and orderly movement of pedestrian or vehicular traffic and any significant negative impact on individuals living in the vicinity of the activity.

2. The potential for the activity which is the subject of the application to conflict or interfere with any other scheduled or permitted use of the area, including the use of a public address system or amplification system. IX-34 10/20053. Any previous history with the requesting party or organization, including but not limited to past abuses of any privileges granted under this or any similar chapter or provision, past successful requests, and any other information which may be deemed pertinent to an evaluation of the proposed event.

HELENA CITY ORDINANCE

Attachment #11

Disclaimer:

This is provided for informational purposes only. The formatting of this ordinance may vary from the official hard copy. In the case of any discrepancy between this ordinance and the official hard copy, the official hard copy will prevail.

ORDINANCE NO. 3099

AN ORDINANCE AMENDING TITLE 5 OF THE HELENA CITY CODE

BY ADDING A NEW CHAPTER 14, TO BE KNOWN AS THE

“SOCIAL HOST ORDINANCE,” THAT REQUIRES NOTIFICATION

OF LAW ENFORCEMENT OF UNDERAGE DRINKING

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA:

That Title 5 of the Helena City Code is hereby amended by adding a new Chapter 14 as follows:

CHAPTER 14

SOCIAL HOST ORDINANCE

5-14-1: Title

5-14-2: Definitions

5-14-3: Duty to Notify Law Enforcement

5-14-4: Exceptions

5-14-5: Penalties

5-14-1: **TITLE:** This chapter shall be known as the ***SOCIAL HOST ORDINANCE***.

5-14-2: **DEFINITIONS:** As used in this chapter, the following definitions apply:

ALCOHOL: Means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

ALCOHOLIC: Means a compound produced and sold for human

BEVERAGE: consumption as a drink that contains more than 0.5% of alcohol by volume including beer, liquor, spirits, wine, and table wine.

GATHERING: A party or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

PERSON: Any individual over 18 years old, firm, association, corporation or any organization of any kind.

PREMISES: Any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, hall or meeting room, park, or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, or rented or any other legal or possessory interest.

SOCIAL HOST: Any person who knows or reasonably should know that an underage person is in possession of or is consuming an alcoholic beverage at a gathering on the person's premises.

UNDERAGE: Any person less than 21 years of age.

5-14-3: **DUTY TO NOTIFY LAW ENFORCEMENT:**

A. A social host shall immediately and by the quickest means of communication give notice to the Helena Police Department that an underage person is in possession of or is consuming an alcoholic beverage at a gathering on the host's premises.

B. Prior notice that an underage person has been in possession of or has consumed alcohol at a prior gathering on the premises raises a rebuttable presumption that the person who has a possessory interest in the premises should have reasonably known that an underage person was in possession of or consumed alcohol while on the premises.

5-14-4: **EXCEPTIONS:** Section 5-14-3 does not apply to the provision of an alcoholic beverage in a non-intoxicating quantity to an underage person by the underage person's parent or legal guardian, physician, or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance.

5-14-5: **PENALTIES:** A violation of this chapter is a municipal infraction. Any person who fails to comply with the requirements of this chapter may, upon conviction thereof, be fined not more than three hundred dollars (\$300.00) for each violation and in addition may be ordered to pay all costs and expenses involved with the case.

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 16th DAY OF JUNE, 2008.

/S/ James E. Smith

MAYOR

ATTEST:

/S/ Debbie Havens

CLERK OF THE COMMISSION

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 7th DAY OF JULY, 2008.

/S/ James E. Smith

MAYOR

ATTEST:

/S/ Debbie Havens

CLERK OF THE COMMISSION

MISSOULA CITY ORDINANCE

ATTACHMENT 12

RESOLUTION _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF MISSOULA RECOGNIZING THE DANGERS OF UNDERAGE DRINKING TO MISSOULA YOUTH AND THE COMMUNITY AND SUPPORTING EFFORTS TO PREVENT ILLEGAL, UNDERAGE ALCOHOL USE.

WHEREAS, the City supports the purpose of building a healthy community for Missoula's youth; and

WHEREAS, alcohol kills five times more teens than all other drugs combined and is a leading factor in the four leading causes of adolescent mortality: motor vehicle crashes, homicides, suicides, and accidents (*Teenagers and Alcohol* (1998), Mediascope Press.); and

WHEREAS, underage drinking is linked with increased risk of physical and sexual assault, vandalism, teen pregnancy, poor academic performance, school drop-out, depression, and family and interpersonal problems, among other serious consequences (*Reducing Underage Drinking: A Collective Responsibility* (2004), National Academies of Science: Institute of Medicine, NAS.); and

WHEREAS, research shows that underage alcohol use may permanently impair functioning of the adolescent brain and physically damage its structure (NAS); and

WHEREAS, 40% of youth who begin drinking before the age of 15 will be diagnosed as alcohol dependent later in their lives (Grant and Dawson (1997), National Institute of Alcohol Abuse and Alcoholism, NIAAA.) and

WHEREAS, underage drinking costs the United States over \$53 billion annually in medical, enforcement, and other costs for alcohol-related traffic crashes, violent crime, burns, drowning, suicide attempts, fetal alcohol syndrome, alcohol poisonings, and treatment ("Costs of Underage Drinking," Pacific Institute for Research and Evaluation (1999), Office of Juvenile Justice and Delinquency Prevention.); and

WHEREAS, the use of alcohol is illegal for anyone under the age of 21; and

WHEREAS, the rate of underage alcohol use in Missoula County is higher than in nearly all other Montana counties and 12-17% higher than the national average, with nearly 1/3 of students in eighth grade and nearly 2/3 of students in 12th grade reporting drinking in the past 30 days (2002 Montana Prevention Needs Assessment, MPNA); and

WHEREAS, the majority of Missoula youth who report using alcohol also report drinking five or more drinks in a row in the past 2 weeks (MPNA); and

WHEREAS, 18.9% of Missoula 8th graders, 34.8% of 10th graders, and 43.3% of 12 graders, report drinking five or more drinks in a row in the past two weeks (MPNA); and

WHEREAS, the only effective way to prevent underage drinking is through a coordinated effort involving youth, law enforcement, the justice system, schools, alcohol retailers, healthcare workers, prevention leaders, policy makers, neighbors, and parents; and

WHEREAS, strong support of these local efforts must be clearly voiced by our community's leadership;

NOW, THEREFORE, BE IT RESOLVED, that the City supports the efforts of the individuals and agencies working together as the Missoula Underage Substance Abuse Prevention coalition to prevent the #1 health problem facing Missoula youth today – illegal underage alcohol use—and to reduce the harmful effects of underage drinking in the Missoula community; and

BE IT FURTHER RESOLVED, that the City appreciates and encourages community and individual efforts to support children and their parents and to provide resources to help them address underage alcohol use and alcohol abuse; and

BE IT FURTHER RESOLVED, that the City endorses the efforts of law enforcement and the justice system to hold responsible all alcohol retailers, parents, and other adults who illegally provide alcohol to minors; and

BE IT FURTHER RESOLVED, that the City supports efforts to hold minors responsible for their illegal behavior, through school policies, law enforcement strategies, and consistency in MIP sentencing; and

BE IT FURTHER RESOLVED, that the City calls upon all citizens, parents, and public and private institutions to help prevent underage drinking throughout our community.

Why is this type of legislation good?

It addresses the problem of underage drinking where it most frequently occurs by closing the loophole that allows it to take place at house parties. It would further reduce easy access to alcohol by youth, would reduce binge drinking, and hold teens and adults accountable for their behavior. Equally important, it provides law enforcement officials an important tool in their communities to prevent tragedy rather than react to it. It assists both the adult and the child to make wise decisions. And finally, it reinforces a consistent message that underage drinking is unhealthy, unsafe and unacceptable.

Why is this ordinance needed?

Under existing law, minors (persons under the age of 21) are prohibited from possessing alcohol. The adult who serves them alcohol is liable; however, if the minors will not give the name of the adult who has supplied them with alcohol the police can do nothing. By making "allowing alcohol to be consumed on the premises" this ordinance would close a loophole regarding who is responsible.

If my child is arrested and found guilty, will this go on his/her permanent record?

The offense is civil penalty - a citation similar to a parking ticket. This is not a misdemeanor or a felony that would stay with them throughout their lives. Its purpose is to hold the person in control of the premises responsible for allowing alcohol to be consumed on the property.

Why does this legislation target house parties or parties that occur on premises?

These parties on private property have repeatedly been identified as the primary source by which youth obtain alcohol. Kids obtain alcohol at parties through friends, older siblings or adults. Because alcohol is often freely available and drinking games are common, binge drinking - consuming five or more drinks on one occasion within a short period of time - frequently occurs. Binge drinking and other heavy drinking is strongly associated with injury, motor vehicle crashes, violence, fetal alcohol syndrome, chronic liver disease, unintended pregnancies and sexually transmitted diseases.

Why has premise been defined?

Premise has been defined to include homes, apartments, back yards, outbuildings, fields, wooded areas, fields, curtilage, etc. This closes the loophole to allow police anywhere on private property when a complaint is filed by a neighbor or concerned community member.

Don't most of the large underage drinking parties happen when parents are out of town?

House parties are happening across our state both when parents are present, and when only teens are home. Under the proposed ordinance, minors can also be cited for hosting underage drinking parties.

Why does this bill target “social hosts”?

Some parents and other adults concerned about drinking and driving mistakenly believe if youth are going to drink, its better they drink in a home than somewhere else. The truth is that teen drinking parties are the source of many problems- driving drunk is just one. Young adults, often college students over 21 years, also frequently host parties and allow minors to drink alcohol. Drinking parties almost always involve binge drinking (consuming five or more drinks in one occasion), and lead to violence, sexual assault, rape, and even alcohol poisoning. These parties can easily spiral out of control. This proposed ordinance encourages parents and adults to do the right thing - avoid providing unsafe environments that foster high risk destructive behavior. The ordinance provides parents with peace of mind by knowing that their children should not be encouraged by other adults to drink alcohol when their child goes to someone else's home.

If I go away on vacation and my child hosts an underage drinking party, am I responsible?

Under the proposed ordinance, adults are not responsible for hosting the party if they are away from home and youth hold a drinking party without their knowledge. A teen or other person in control of the house could be cited for hosting the party in addition to possessing alcohol. Under other state statutes and case law, the owner of a home may be held liable for injuries or other consequences that occur regardless of whether or not the homeowner is present. This ordinance doesn't change existing civil liability. However, law enforcement officials may be able to intervene to address the issue of underage drinking before tragedy strikes and minimize damage to a homeowner's property.

Would this proposed ordinance prevent parents from providing alcohol to their own children?

The decision to provide alcohol to one's own child is a personal choice. Under current law, illegal possession of alcohol by minors does not apply to a minor who possesses alcohol while accompanied by their parent, guardian or spouse over the age of 21. This same exception applies in the proposed ordinance. This bill prevents the adults from knowingly allowing children other than their own to possess alcohol on private property without that child's parent

being present. The right to allow a child to drink is reserved for only a child's parent or guardian - not someone else.

Surgeon's General's "CALL TO ACTION"

- • Enforcement of minimum drinking age laws and other measures that directly reduce alcohol availability. Enforcement should target underage drinkers, merchants who sell alcohol to youth, and people who provide alcohol to youth.
- • Appropriate parental penalties for adolescent alcohol use, such as loss of privileges (e.g., allowance, going out with friends, and use of the car).
- • Holding adults accountable for underage drinking at house parties even when those adults are not at home.
- • Enforcement of zero tolerance laws that ban underage youth from driving with blood alcohol content (BAC) above detectable levels.
- • Any measure that decreases the availability of alcohol to youth and so raises the cost of getting it.

**Buyer Documentation
(Attachment #13)**

CASE NUMBER # _____



(Photograph of CI the day of the operation)

CI Information: C.I. # 008-0013

This photo to remain in CI's file until employment is ceased.

Location of buy: John's Pub
123 W. Main
Anywhere USA, MT

Date/Time of buy: January 29, 2009 at 22:05 hrs.

Buyer Information Form

(Attachment #14)

Control/handler A.E.T. Member:	CI#:
Referral Agency:	Officer:

CONFIDENTIAL CONTRIBUTOR INFORMATION

True Name:					
Race:	Sex:	HEIGHT:	WEIGHT:	HAIR:	EYE:
D.O.B.	SNN:	DRIVER'S LIC. #:			
PLACE OF BIRTH:					

FINGERPRINTED:	YES	NO	WHERE:	DATE:
PHOTOGRAPHED:	YES	NO	WHERE:	DATE:

HOME ADDRESS:	HOME PHONE:	CELL:
OCCUPATION:		
BUSINESS ADDRESS:	WORK PHONE:	
VEHICLE:	YEAR/MAKE:	MODEL:
LICENSE PLATE:		REG. OWNER

IN CASE OF EMERGENCY CONTACT:	
ADDRESS:	PHONE:
RELATIONSHIP:	

Device Authorization Form

(Attachment #15)

I, _____ do hereby give my authorization and consent for the A.E.T. to provide me with and wear a wiring device and/or camera to record my interaction with those I may come in contact with during an A.E.T. investigation.

I further give my authorization and consent to the A.E.T. to monitor and record all transmissions and/or conversations to which I am a party.

My authorization and consent is given freely and voluntarily without coercion, duress, threats or promises of any kind, for the purpose of obtaining evidence of criminal acts and/or conspiracies of criminal acts and covers the period of:

_____ to _____

Dated this _____ day of _____ 20__; Time _____

Confidential Informant

Witness

GENERAL RELEASE OF LIABILITY FROM RIDER ACCOMPANYING OFFICER

(Attachment #16)

For and in consideration of my being allowed to ride in a (enter agency name) vehicle and accompany an employee or agent of said entity for my own personal benefit, I do hereby release the (enter agency name) , a political subdivision of the State of Montana, the (enter agency name), and any and all elected or appointed officials, administrators, officers, employees, volunteers, agents, insurers and any other individuals or entities affiliated with such persons and/or entities, from any and all civil liability or any and all forms of injury which may arise as a result of my riding with and/or accompanying any person affiliated with such persons or entities.

I acknowledge that I understand that there are many known and unknown dangers and/or risks associated with me accompanying a law enforcement officer and I grant a general release, for myself, my heirs, executors, administrators and assigns and I waive, remise and forever discharge and release the (enter agency name) and any and all elected or appointed officials, administrators, officers, employees, volunteers, agents, insurers and any other individuals or entities affiliated with such persons and/or entities from any and all claims, several or otherwise, past, present or future, which can or may ever be asserted as a result of any injuries or damages, physical or mental, sustained by me while I am accompanying any of the aforementioned persons or entities, whether in or out of a vehicle.

I have read the foregoing and I understand that the terms of this agreement are contractually and legally binding and that no verbal statement to the contrary, by any person or entity, can void or alter the terms of this agreement.

Rider Name: _____

Rider Signature: _____

DATED this _____ day of _____, 20____.

SAMPLE REPORT
(Attachment #17)

On January 29th, 2009 members of the Alcohol Enforcement Team conducted valley wide alcohol compliance checks in _____ County. CI #08-0013 was utilized and observed during the entire operation.

When asked, the CI presented his/her real (STATE) identification showing his/her true age. There was no attempt to deceive the seller.

At approximately 1700 hours CI #08-0013 entered the (enter location name and address), with Officer/Deputy (enter name). The CI selected a six pack of Bud Light, a known alcoholic beverage from the stores cooler. The CI then approached the clerk, later identified as (Name of Clerk). After learning the total cost, the CI provided (the clerk) the money and change was received. The CI then exited the store. At no time did (the clerk) request to see the CI's identification, nor did they ask if the CI was 21.

Officer/Deputy (enter name) approached (the clerk) and identified himself and his assignment. He explained the (enter business name) was the subject of an alcohol compliance check and that he had observed the sale to a minor. (The clerk) was cited for providing alcohol to a minor, a violation of 16-3-301 MCA. The alcohol was kept for evidentiary purposes.

Attachments: Photo of purchased alcohol
 Photo of buyer
 Copy of buyer ID used during purchase

REFERENCES

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2. Wagenaar, A.C., Wolfson, M. Enforcement of the legal minimum drinking age in the United States. *Journal of Public Health Policy*, 15(1):37-53, 1994.
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4. Wolfson, M., Toomey, T.L., Forster, J.L., Murray, D.M., Wagenaar, A.C. Alcohol outlet policies and practices concerning sales to underage people. *Addiction*, 91(4):589-602, 1996.
5. PIRE, www.pire.org
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